IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 1793 of 2004(L)

PETITIONER:

MR.PONNAMBALAVASAN,
PROPRIETOR ASSOCIATED TRADERS, CULLEN ROAD,
MULLAKKAL, ALLEPPEY.

BY ADV. SRI.A.S.P.KURUP
SRI.SADCHITH.P.KURUP

RESPONDENT:

VIDEOCON INTERNATIONAL LTD.,
RAVIPURAM JUNCTION, M.G.ROAD, COCHIN-15.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.1793/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF JUDGMENT DATED 24.1.1998 PASSED BY THE 2ND ADDITIONAL SUB COURT, ERNAKULAM IN O.S.NO.135/96.

EXT.P2: TRUE COPY OF JUDGMENT DATED 11.6.2003 PASSED BY THE HON'BLE HIGH COURT IN A.S.NO.935/98.

EXT.P3: CERTIFIED COPY OF ORDER DATED 26.9.2003 PASSED BY THE HON'BLE SECOND ADDITIONAL SUB COURT, ERNAKULAM IN O.S.NO.135/96.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.1793 of 2004

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Dated: 25th May, 2007

JUDGMENT

The defendant in a suit for money based on accounts has filed this Writ Petition under Article 227 of the Constitution seeking to quash Ext.P3 order of the II Additional Subordinate Judge, Ernakulam entering finding on issue No.2 regarding limitation in favour of the plaintiff. In fact in the first instance the learned Subordinate Judge found that the suit was barred by limitation upholding the contention of the defendant that it is article 14 of the Limitation Act which applies. But later this court by Ext.P2 appellate judgment set aside the order of dismissal and directed the trial court to adjudicate the question of limitation in the context of applicability of article 1 of the Limitation Act. The impugned order has been passed accordingly.

2. Even though the respondent was served with notice they have not entered appearance before this court. I have heard the submissions of Mr.Sadchith P.Kurup, learned counsel for the petitioner.

3. Mr.Kurup submitted that pursuant to the order of remand passed by the Division Bench the respondent-plaintiff entered appearance on 4.8.2003 from which date the case was adjourned to

16.8.2003 and thereafter to 28.8.2003. On 28.8.2003 the plaintiff sought for time to produce documents and the case was accordingly adjourned to 2.9.2003. On that day the plaintiff-respondent produced photo copy of two ledgers. The plaintiff also served interrogatories along with an application for such service on the defendant. Mr.Kurup submitted that the court below did not pass any order on the application for leave to serve interrogatories but simply adjourned the case to 16.9.2003 for hearing. On 16.3.2003 the matter was heard pursuant to which the impugned order was passed drawing adverse inferences against the petitioner for not responding to the interrogatories. According to Mr.Kurup, the court below was not at all justified in drawing adverse inferences against the petitioner for not answering the interrogatories. Learned counsel would however fairly concede that if there is an entry on 26.5.1994 as claimed by the respondent-plaintiff regarding remittance of Rs.10,000/- by the petitioner, then the suit will be within the period of limitation since article 1 of the Limitation Act would apply.

3. Having considered the submissions addressed before me by Mr.Kurup, I feel that he is justified in seeking a reconsideration of the issue by the learned Subordinate Judge. The following were the two questions which the respondent sought to serve on the petitioner by way of interrogatories:

1. Whether the defendant is admitting the issuance of cheque for Rs.10,000/- in favour of the plaintiff? and

2. The name of the Bank and the Branch on which the defendant has drawn the cheque for Rs.10,000/-?

It is clear on a reading of the two questions themselves that the respondent-company is not aware of the name of the drawee Bank and much less the number of the cheque which it claims to have received from the petitioner. If as a matter of fact the petitioner had issued cheque for Rs.10,000/- to the respondent and the respondent had realised the proceeds of that cheque as claimed by the respondent, it could have been possible for the respondent a reputed company which claims to be maintaining accounts regularly to adduce better evidence regarding the same. The original of the cheque could have been got produced on summons. Steps could have been taken for production of the bank records relating to the petitioner also. The stand taken by the respondent before this court in the appeal before the Division Bench was that the original ledgers could not be produced since they were produced in O.S.No.126 of 1996, suit filed by the respondent against another of its customers. It was even suggested by the Division Bench that the court below without insisting on production of the original ledgers could have called for the original ledgers from the files of O.S.No.126 of 1996 and inspected them. I do

not know why the respondent chose to produce only unattested photo copy of the ledgers after remand by the Division Bench. If the original ledgers were before this court in the appeal preferred against the judgment and decree in O.S.No.126 of 1996, the respondent could have at least got certified copy of the relevant pages of the ledgers from this court for production before the Sub Court. Even that was not done. There is no resistance to the submission of Mr.Kurup that the court below has not passed any orders on the petition for leave to serve interrogatories. Whatever that be, I find force in the submission of the learned counsel that reasonable time was not given to the petitioner for filing objections to that application.

4. The result of the above discussion is that the matter requires reconsideration at the hands of the Sub Court. Ext.P3 findings are set aside and the court below is directed to take a fresh decision on the issue regarding limitation after directing parties to let in whatever evidence they had in substantiation of their contentions. Fresh decision as directed above will be taken at the earliest and at any rate within two months of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**